IN THE HIGH COURT OF UTTARNCHAL
AT NAINIAL
Civil Misc. Writ Petition No. 1917 of 2001 (S/S)

Shiv Ram Singh Yadav
S/o Sri Umrao Prasad Yadav
R/o Village Kansli, Post Kansli
Tahsil Kot Puti
District Jaipur ……..Petitioner

Versus

1. Union of India through Commandant,
Kumaon Regiment, Ranikhet, Almora
2. Commandant, Kumaon Regiment
Ranikhet, Almora …..Respondents

Hon'ble Rajesh Tandon, J. **Dt. 24.04.2004**

Heard learned counsel for the petitioner Sri S.B. Agarwal and learned Sanding Counsel (Central Govt.)

By the present writ petition the petitioner has prayed for the issue of the writ, order or direction in the nature of mandamus commanding the respondents to allow the petitioner to join his duties and not refuse him except in accordance with law.

Brief facts giving rise to the present writ petition are that the petitioner has joined Military at Ranikhet on 28.10.1996, and took training in a Company III Platoon.

On 05.06.1997, the petitioner was admitted the Hospital at Ranikhet and he was discharged from three after 8 day but he was given 28 days leave because the petitioner was not feeling well thereafter and still was weak. The petitioner went to Ranikhet to join his duty on 21.07.1997 but one sepoy told him that he will not be taken back under the oral orders of respondent no. 2. The petitioner has not produced any written letter form respondent no. However, the petitioner has made three representations on 21.02.1998, 26.05.1998 and 23.07.1998 by speed post with a request to allow him to join the office but the petitioner has not received any reply.

Further, the petitioner has not been so far declared as deserter nor his services have been terminated till date.

In the counter affidavit, learned counsel for the respondents has submitted that the petitioner had never represented or physically reported to the Centre to join his duty and not even disclosed his whereabout after desertion. After availing the sick leave form 14.06.1997 to 11.07.1997 by Military Hospital, Ranikhet, the petitioner has to report to the Military Hospital, Ranikhet, for further medical investigation but he did not do so. This conduct by the petitioner was totally against the Army Rules and the Leave Rules.

In the Army Act 1950, it has been mentioned as under:-

"Desertion and aiding desertion:-

1) *Any person subject to this Act who deserts or attempts to desert the service shall, on conviction by court martial.*

If he commits the offence on active service or when under orders form action service, be liable to suffer death or such less punishment as is in this Act mentioned and

If he commits the offence under any other circumstances, be liable to suffer imprisonment for a term which may extend to seven years or such loss punishment s is in this Act mentioned.

2) *Any person subject to this Act who, knowingly harbours any such deserter shall, on conviction by court-marital, be liable to suffer imprisonment for a term which may extend to seven years or such less punishment as is in this Act mentioned.*

3) Any person subject to this Act who, being cognizant of any desertion or attempt at desertion of a person subject to his Act, does not forthwith given notice to his own or some other superior officer, or take any steps in his power in cause such person to be apprehended shall, on conviction by court martial be liable to suffer imprisonment of a terms which may extended to two years or such less punishment as is in this Act mentioned.

Absence without leave

Any person subject to this Act who commits any of the following offences, that is to say:-

a. *absents himself without leave; or*

b. without sufficient cause overstays leave granted to him; or

c. being on leave of absence and having received information from props authority that corps, or portion of a crops, or any department to which he belongs, has been ordered on active service, fails without sufficient cause, to rejoin without delay; or

d. without sufficient cause fails to appear at the time fixed at the parade or place appointed for exercise or duty; or

e. when on parade, or on the line of march, without sufficient case or without leave form his superior officer, quits the parade or line or march; or

f. when in camp or garrison or elsewhere, is found beyond any limits fixed or in any place prohibited, by any general, local or other order, without a pass or written leave form his superior officer; or

g. Without leave form his superior officer without due cause, almost himself form any school when duly ordered to attend there, shall on conviction by court-martial, be liable to suffer imprisonment for a term which may extend to three years or such less punishment as is this Act mentioned.

In view of the above facts ad circumstances, the petition is directed to prefer a fresh representation before the respondents and the respondents may dispose of the same within three week from the receipt of the date of the representation.

With these directions, the writ petition is disposed of accordingly.

24.04.2004 **(Rajesh Tandon, J.)**

ASWAL